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DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV Docket No.161]

Radiation Exposure Compensation Act: Procedures for Claims Submitted at the Revised Statutory Filing Deadline

AGENCY: Civil Division, Department of Justice.

ACTION: Notification of procedures.

SUMMARY: The Department of Justice ("the Department") is publishing this document to update the public of the Department's procedures for filing claims under the Radiation Exposure Compensation Act ("RECA") at the revised statutory filing deadline. This document supersedes the Department's notification of Procedures for Claims Submitted at the Statutory Filing Deadline (Dec. 9, 2020).

DATES: The policy is effective on January 23, 2023.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), 202-616-4090, Constitutional and Specialized Tort Litigation Section, Torts Branch, Civil Division, Department of Justice, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION:

Overview

The RECA Extension Act of 2022 ("the Extension Act"), Pub. L. 117-139, requires that the RECA Trust Fund shall terminate on the date that is 2 years after the law's date of enactment, June 7, 2022. In addition, a claim to which RECA applies shall be barred unless the claim is

filed not later than 2 years after the date of enactment of the RECA Extension Act of 2022. The statute is silent with respect to whether the RECA Trust Fund will be available to pay timely, meritorious claims received at the filing deadline.

The Department is publishing this document to articulate its policy that all timely filed, meritorious RECA claims shall be paid. This policy is consistent with the statutory requirements that the Department determine eligibility within 12 months of filing and pay meritorious claims within 6 weeks of approval. The amended statutory filing deadline, June 8, 2024, is a Saturday. Accordingly, claims that bear a date of June 10, 2024, on the postmark or stamp by another commercial carrier shall be deemed timely filed upon receipt by the Radiation Exposure Compensation Program. The Department will return untimely claims and will not accept electronic submissions. Documentation to establish the eligibility of any potential beneficiary of an awarded claim must be provided by June 10, 2024, or within the 12-month determination period provided by the Act, or the award shall be deemed rejected.

Background

Codified at 42 U.S.C. 2210 note, the Radiation Exposure Compensation Act (“RECA”) offers an apology and monetary compensation to individuals (or their survivors) who have contracted certain cancers and other serious diseases following exposure to radiation released during above-ground atmospheric nuclear weapons tests, or following their employment in the uranium production industry during specified periods. This unique program was designed by Congress as an alternative to litigation in that the statutory criteria do not require claimants to establish causation. Rather, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or

residing in a designated location for a specific period of time, he or she qualifies for compensation.

Congress charged the Attorney General with authority to establish filing procedures under RECA, as well as responsibility for adjudicating claims under the Act, and authorizing payment in those claims which are determined to be qualified for compensation. The Attorney General delegated these functions to the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice.

The RECA Extension Act of 2022

The RECA Extension Act of 2022 (“the Extension Act”), Pub. L. 117-139, was signed into law on June 7, 2022. The Extension Act requires that the RECA Trust Fund shall terminate on the date that is 2 years after the law’s date of enactment. In addition, a claim to which RECA applies shall be barred unless the claim is filed not later than 2 years after the date of enactment of the Extension Act. Accordingly, the RECA Trust Fund terminates on June 8, 2024. The statute of limitations for new RECA claims tolls on that date. The Extension Act is silent regarding whether the RECA Trust Fund will be available for meritorious claims submitted at the statutory filing deadline.

Statement of Policy

The Department is publishing this document to articulate its policy that all timely filed, meritorious RECA claims against the RECA Trust Fund will be paid, consistent with the requirements under RECA. Several stakeholders have expressed concern that the termination of the RECA Trust Fund on the deadline for claims may render it unavailable to pay meritorious claims. Once a claim is filed with the Department, RECA imposes statutory obligations for the Department to adjudicate the claim within 12 months, and issue payment on any approved claims

within 6 weeks of approval. RECA Sec. 6(d). These statutory obligations will require the RECA Trust Fund to remain available until the Department has determined entitlement for all timely filed claims, including claims filed on the statutory filing deadline.

In addition, several stakeholders have noted that the revised statutory filing deadline, June 8, 2024, is a Saturday. The Department shall deem claims that bear a date of June 10, 2024, on the postmark or stamp by another commercial carrier, timely filed upon their receipt by the Radiation Exposure Compensation Program. This policy is consistent with methods for computing time set forth at Federal Rule of Civil Procedure 6(a), and with standard agency practice where a deadline falls on a weekend or holiday establishing the next business day as the deadline for submissions. The postmark requirement is consistent with the Department's existing procedures for submitting claims at 28 CFR 79.71(a) and (b), requiring a claim to be submitted in writing on a standard claim form and mailed to the address of the Radiation Exposure Compensation Program. In addition, this policy allows claimants to affirmatively establish the timely filing of their claim by obtaining a postmark or other mailing date stamp consistent with the filing deadline.

The regulation at § 79.71(a) requires that claims be mailed to the Department. Accordingly, the Department will not accept electronically submitted claims.

Claims bearing a date on and after June 11, 2024, as indicated by the postmark or stamp by another commercial carrier, shall be returned to the submitting party due to untimely filing. Claims returned due to untimely filing will include a letter from the Radiation Exposure Compensation Program indicating the Department is barred by statute from reviewing the claim or awarding compensation.

This policy applies to all claims received at the filing deadline, including the resubmission of a previously denied claim under Sec. 8(b) of RECA. Resubmissions of previously denied claims bearing a postmark or stamp by another commercial carrier dated June 11, 2024, or later shall be returned due to untimely filing.

For timely filed claims in which a share of the compensation award is held in trust pending documentation to establish the eligibility of a potential beneficiary, such shares of compensation shall be deemed rejected consistent with 28 CFR 79.75(b) if sufficient documentation to establish the eligibility of the potential beneficiary is not received by June 10, 2024, or within the 12-month determination period provided by the Act, whichever falls later.

This document is intended to inform the public of the Department's policy regarding procedures for filing claims at the statutory deadline. The Department will post this document to its RECA website at www.justice.gov/civil/common/reca, and continue to announce this policy at outreach events and in communications with claimants, counsel, and support groups.

This document supersedes the Department's notification of Procedures for Claims Submitted at the Statutory Filing Deadline, 85 FR 79118 (Dec. 9, 2020).

Dated: January 12, 2023.

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Director, Torts Branch
Civil Division

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